

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re: ZILLOW GROUP, INC.
SESSION REPLAY SOFTWARE
LITIGATION

MASTER CASE NO. C22-1282JLR

ORDER TO SHOW CAUSE

This Order Relates To: All Actions

On December 27, 2023, Plaintiff Ashley Popa filed a notice of appeal of the court's order dismissing her claims for lack of standing in *Popa v. PSP Group, LLC*, a parallel action involving alleged violations of privacy statutes and common law arising from Defendant PSP Group, LLC's use of session replay code on its website. (*See* Not. of Appeal, *Popa v. PSP Grp., LLC*, No. C23-0294JLR (W.D. Wash. Dec. 27, 2023) (hereinafter, "*Popa*"), ECF No. 74; 10/24/23 Order, *Popa*, ECF No. 67 ("*Popa* Dismissal Order") (dismissing Ms. Popa's claims for lack of standing and granting leave to amend); 12/1/23 Order, *Popa*, ECF No. 72 (granting Ms. Popa's request to enter a final order and

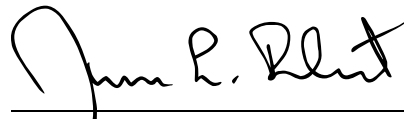
1 judgment of dismissal).) Ms. Popa is a plaintiff in this matter as well as in *Popa*. (*See*
2 *generally* Dkt.)

3 The key issue presented in Ms. Popa’s appeal is nearly identical to the threshold
4 issue of standing presented in this matter—specifically, whether the allegations of harm
5 set forth in Plaintiffs’ complaint plausibly allege a cognizable injury in fact sufficient to
6 confer Article III standing. (*Compare* Consol. Am. Compl. (Dkt. # 44), *with* Am.
7 Compl., *Popa*, ECF No. 26.) In addition, nearly identical issues of injury in fact and
8 standing have been litigated in federal courts across the country in cases involving
9 session replay code and alleged violations of state privacy statutes. (*See, e.g., Popa*
10 Dismissal Order at 2 n.3 (citing cases); 9/11/23 Order (Dkt. # 64) at 2-4 (discussing cases
11 and ordering the parties in this matter to submit supplemental briefing regarding whether
12 Plaintiffs have standing to pursue their claims); *see also* 10/30/23 Order (Dkt. # 68)
13 (ordering the parties to submit supplemental briefing regarding the impact, if any, of
14 *Jones v. Ford Motor Company*, 85 F.4th 570 (9th Cir. 2023), on the standing issues
15 presented in these consolidated cases).)

16 Because the Ninth Circuit’s decision in the *Popa* appeal is likely to provide
17 guidance on how to analyze the standing issues in this case, it is the view of the court that
18 a stay of these consolidated actions pending the resolution of the *Popa* appeal will further
19 the interests of judicial economy and allow the court to avoid inconsistent rulings. *See*
20 *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (holding that the power to stay is
21 “incidental to the power inherent in every court to control the disposition of the causes on
22 its docket with economy of time and effort for itself, for counsel, and for litigants”);

1 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979) (“A trial court
2 may, with propriety, find it is efficient for its own docket and the fairest course for the
3 parties to enter a stay of an action before it, pending resolution of independent
4 proceedings which bear upon the case.”). Therefore, the court ORDERS the parties to
5 show cause why the court should not stay this matter pending the Ninth Circuit’s
6 resolution of the *Popa* appeal. Plaintiffs, Defendant Zillow Group, Inc., and Defendant
7 Microsoft Corporation shall each file a response to this order of no more than 1,200
8 words in length by no later than **January 4, 2024**. Failure to respond to this order will be
9 construed as consent to a stay.

10 Dated this 27th day of December, 2023.

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14 JAMES L. ROBART
15 United States District Judge
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